NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. PR 25-019

Bankruptcy Case No. 25-01204-MAG

ANTONIO EMILIO DUCOS MONTALVO,
Debtor.

EMI EQUITY MORTGAGE, INC.,
Appellant,

v.

ANTONIO EMILIO DUCOS MONTALVO,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
(María De Los Ángeles González, U.S. Bankruptcy Judge)

Before
Finkle, Katz, and Bacher, U.S. Bankruptcy Appellate Panel Judges.

Wallace Vázquez Sanabria, Esq., on brief for Appellant.
Miriam Socorro Lozada Ramirez, Esq., on brief for Appellee.

November 9, 2026

Bacher, U.S. Bankruptcy Appellate Panel Judge.

In the debtor's chapter 13 case, the lender asserted a secured claim which included attorney's fees for pre-petition representation in a foreclosure action and representation in the bankruptcy case. The debtor, who proposed to cure mortgage arrears through his plan, objected to the lender's claim for attorney's fees, arguing they were excessive, inadequately supported, and not authorized by contract or statute. The bankruptcy court found the claimed attorney's fees were insufficiently supported and allowed fees in a reduced amount. The lender's motion to reconsider was denied, and it appealed. The Panel **AFFIRMS** both orders.

BACKGROUND

Antonio Emilio Ducos Montalvo (the "Debtor") is a chapter 13 debtor. On his bankruptcy schedules, the Debtor valued his residence at $110,000. In his chapter 13 plan, the Debtor proposed to cure mortgage arrears through the plan and to make regular mortgage payments outside of the plan.

EMI Equity Mortgage, Inc. asserted a $88,969.99 claim based on a mortgage loan secured by the Debtor's residence. The claim listed a cure amount of $6,538.97, which included $546.80 for "bankruptcy legal fees" and $1,810.80 for "foreclosure fees." The Debtor objected to the attorney's fees on the basis that they: (1) were excessive; (2) lacked supporting documentation; (3) were not shown to be necessary or beneficial to the estate; and (4) were not authorized by contract or statute.

EMI countered that it was authorized under the terms of the note and mortgage to charge the Debtor attorney's fees for services performed in connection with the Debtor's default. Thus, EMI asserted, it was entitled under § 1322(e) to recover, through the Debtor's chapter 13 plan, attorney's fees of $1,300 for the pre-petition foreclosure action and $1,106.25 for representation

in the bankruptcy case. EMI attached to its response an invoice for a $1,300 "summons fee" for the foreclosure action with no breakdown of rates or services rendered. EMI also attached two invoices for legal services rendered in the bankruptcy case: one for $112.50 and the other for $993.75. These invoices contained a breakdown of services rendered (primarily reviewing and responding to the claim objection), the time spent, and the hourly rate charged.

In reply, the Debtor objected to the $1,300 in foreclosure legal fees because the submitted invoice showed "no work beyond the filing of a complaint, with no litigation activity to justify the charges." He also objected to $993.75 of the legal fees claimed for representation in the bankruptcy case, stating that while the invoice included itemized entries, it was "limited in detail and d[id] not reflect estate benefit or extraordinary services."[1]

Acting without a hearing, the bankruptcy court entered an order partially sustaining the Debtor's objection (the "Claim Order"). The bankruptcy court concluded that § 1322(e) was the controlling provision for determining the amount of allowable mortgage arrears and that the court was required to look to non-bankruptcy law and the underlying agreement between the parties to determine if attorney's fees should be allowed and in what amount. The court found the mortgage and note authorized the lender's recovery of "reasonable" attorney's fees, but that EMI's claim did not describe the legal services rendered in the detail required for the court to determine reasonableness.

With respect to the foreclosure legal fees, the bankruptcy court observed that the proof of claim identified only a lump sum fee for services rendered and that "[n]o further explanation, itemization, billing records or description of the legal work or time incurred [wa]s included to

[1] Although the Debtor stated generally that he was challenging all the claimed attorney's fees, he did not expressly challenge the $112.50 invoice for post-petition legal services. It is not clear from the record whether that amount was separately allowed.

justify the amount billed." Finding the foreclosure action had only progressed through the initial stages of filing and recording the complaint (as evidenced by the expenses requested), the court ruled that "reasonable attorney's fees for such work should not exceed $300." The bankruptcy court further concluded that although the services rendered in the bankruptcy case were better described, they still lacked the required specificity to determine reasonableness. The court stated it would not award six hours of attorney's fees "for the preparation of a five-page response to the objection to claim in the bankruptcy case without more explanation" and that, "[i]n the interests of expediency and cost containment," it would only award $750 as "reasonable attorney's fees" incurred in the bankruptcy proceeding. Accordingly, the bankruptcy court partially sustained the Debtor's claim objection, allowing $300 for legal services related to the foreclosure action and $750 for services rendered in the bankruptcy case.

The Debtor filed an amended plan to account for the reduced amount of attorney's fees allowed in the Claim Order. EMI did not appear at the confirmation hearing, or otherwise object to confirmation, and the amended plan was confirmed in open court following the recommendation of the chapter 13 trustee.

EMI moved for reconsideration of the Claim Order under Fed. R. Bankr. P. 59(e), arguing that the bankruptcy court erred in its application of a "reasonableness" standard to determine allowable attorney's fees under § 1322(e). According to EMI, mortgage servicers are required to follow Freddie Mac regulations in determining reasonableness of attorney's fees, and those regulations define "reasonableness" of foreclosure fees as comparable to those customarily charged in the area where the property is located. Exhibit 57A of the Freddie Mac guidelines defines "reasonable foreclosure fees" for Puerto Rico as $4,000. Thus, EMI contended, a flat fee was "reasonable" and charging $1,300 for the initial stage of the litigation (filing the complaint)

was "both reasonable and customary." As to the fees relating to the bankruptcy case, EMI stated that the fees charged were at a "preferential rate" of $150 per hour, rather than the law firm's usual $250 per hour rate, and that certain legal issues needed to be evaluated.

The Debtor countered that the Freddie Mac guidelines (submitted by EMI for the first time with its motion for reconsideration) do not control the allowance of attorney's fees in bankruptcy and do not override the requirements in the Bankruptcy Code and Rules that only attorney's fees which are reasonable and supported by itemized evidence are allowable in bankruptcy.

After a hearing, the bankruptcy court entered an order denying reconsideration. The court found that EMI was simply reiterating arguments previously advanced and rejected in the Claim Order. The court further concluded that the Freddie Mac guidelines, introduced for the first time on reconsideration, had "highly questionable" probative value for determining the reasonableness of attorney's fees in bankruptcy, and did not constitute "newly discovered evidence" warranting reconsideration. "Simply put, EMI's motion for reconsideration cannot be used as a vehicle for the proverbial second bite at the apple," the court stated.

This appeal followed.

APPELLATE JURISDICTION AND STANDARDS OF REVIEW

The Claim Order and the order denying reconsideration are final orders over which the Panel has jurisdiction. See 28 U.S.C. § 158(a)-(c); Scotiabank de P.R. v. Medina Lorenzo (In re Medina Lorenzo), BAP No. PR 15-011, 2015 WL 4537792, at *4 (B.A.P. 1st Cir. July 24, 2015) (holding that orders sustaining claim objections and orders denying reconsideration of such orders are final and appealable), aff'd, 637 F. App'x 623 (1st Cir. 2016).

An order disallowing a claim is reviewed for an abuse of discretion, "particularly where, as here, the disallowance involved 'an exercise of the court's general equitable powers.'" RNPM, LLC v. Mercado Alvarez (In re Mercado Alvarez), 473 B.R. 853, 859 (B.A.P. 1st Cir. 2012) (citation omitted), aff'g, In re Mercado Alvarez, 458 B.R. 645 (Bankr. D.P.R. 2011). A bankruptcy court's refusal to reconsider a claim determination is also reviewed for an abuse of discretion. See Orsini Santos v. Lugo Mender (In re Orsini Santos), 349 B.R. 762, 769 (B.A.P. 1st Cir. 2006). "A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." In re Medina Lorenzo, 2015 WL 4537792, at *4 (citation omitted).

DISCUSSION

The essential facts underlying this appeal are not in dispute. The parties agree that § 1322(e) controls the determination of the amount of both the pre- and post-petition attorney's fees which may be included in EMI's mortgage arrearage claim and that the court must look to the underlying agreement and relevant non-bankruptcy law. EMI argues, however, that the bankruptcy court erroneously applied § 1322(e) in determining the amount of allowed attorney's fees to be included in the cure amount and abused its discretion in rejecting "additional evidence" on reconsideration regarding the Freddie Mac guidelines.

I. The Bankruptcy Court Did Not Abuse Its Discretion in Partially Disallowing EMI's Claim for Attorney's Fees

Under § 1322(b)(5), a chapter 13 plan may "provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any . . . secured claim on which the last payment is due after the date on which the final payment under the plan is due[.]" 11 U.S.C. § 1322(b)(5). If a chapter 13 plan proposes to cure a default under § 1322(b)(5), "§ 1322(e) sets forth how the amount necessary to cure a default . . .

is determined." In re McLemore, 426 B.R. 728, 745 (Bankr. S.D. Ohio 2010) (citation omitted). It requires courts to look to the underlying agreement and applicable non-bankruptcy law when determining the amount necessary to cure a default. 11 U.S.C. § 1322(e). "Section 1322(e) does not apply exclusively to the curing of interest on arrears but also includes other charges that comprise the arrearage mortgage claim such as attorney's fees, costs and late charges." In re Mercado Alvarez, 458 B.R. at 651 (citations omitted). "Under § 1322(e), in order to be a mandated component of the cure through a chapter 13 plan: (1) the attorney's fees must be required to be paid in order to cure the default under the original agreement; and (2) the collection of such attorney's fees cannot be prohibited by state law." Gagne v. Countrywide Home Loans, Inc. (In re Gagne), 378 B.R. 439, 443 (Bankr. D.N.H. 2007) (citation omitted).

Thus, to determine whether EMI was entitled to recover attorney's fees as part of its claim and, if so, the amount of attorney's fees to be included in the cure amount, the bankruptcy court was required to look to Puerto Rico law and the provisions of the note and mortgage. Courts applying Puerto Rico law have held that reasonable attorney's fees may be recovered when there is an enforceable contractual provision authorizing them. See, e.g., Cooperativa de Ahorro y Crédito Sabaneña v. Casiano Rivera, 184 P.R. Dec. 169 (2011). Here, as the bankruptcy court observed, the note and mortgage contain several provisions that permit EMI to collect "reasonable" attorney's fees and costs incurred in connection with the Debtor's default for the purpose of protecting EMI's interest in the mortgaged property and its rights under the agreement. Thus, the record supports the bankruptcy court's determination that the Debtor was contractually obligated to pay "reasonable" attorney's fees to cure his default. Further, not only do the mortgage and note limit EMI's recovery to *reasonable* attorney's fees, but courts applying Puerto Rico law typically employ a "reasonableness" requirement when awarding legal fees

under a contractual provision. See Carrero v. Molina Healthcare of P.R., Inc., 737 F. Supp. 3d 135, 143 (D.P.R. 2024).

The bankruptcy court concluded it could not evaluate reasonableness because EMI's claim identified only a lump sum fee for services rendered "without providing any further explanation, itemization, billing records or description of the legal work or time incurred to justify the amount billed for said legal fees." The record supports the bankruptcy court's determination. Without detailed documentation such as invoices reflecting time entries or itemized descriptions of the services performed, it was impossible for the bankruptcy court to discern what work was performed or the number of hours expended. Looking at the nature of the costs incurred, the bankruptcy court ultimately found that the foreclosure action had only progressed through the initial stages of filing and recording the complaint and that $1,300 in legal fees for such work was not reasonable. The Panel finds no abuse of discretion in the bankruptcy court's reduction of allowable foreclosure legal fees.

EMI argues that the bankruptcy court's allowance of only $300 for foreclosure legal fees constituted "a manifest error of law" because the Freddie Mac guidelines demonstrate that $1,300 for the initial stage of the litigation (filing the complaint) was "both reasonable and customary." However, EMI did not argue in its response to the claim objection that the Freddie Mac guidelines established the reasonableness of its claimed fees or submit the Freddie Mac guidelines to the bankruptcy court before the court issued the Claim Order. Nor did EMI present any other evidence of the customary flat fees charged in Puerto Rico for routine residential foreclosure proceedings or evidence that it had a flat fee agreement with its foreclosure counsel. There is support for the bankruptcy court's reduction of allowable attorney's fees under such circumstances. See In re Cavanaugh, No. 20-10485-j13, 2021 WL

471426, at *6 (Bankr. D.N.M. Feb. 9, 2021) (reducing attorney's fees where creditor presented no evidence of customary flat fees charged in New Mexico for routine residential foreclosure proceedings and the claim lacked supporting information from which the court could evaluate the nature of the work performed or the fees charged). Thus, the Panel finds that the bankruptcy court's reduction of the flat sum asserted for foreclosure legal fees was not legal error.

As to the legal fees for representation in the bankruptcy case, the record reflects that while the invoices contained a breakdown of services rendered, the time spent, and the hourly rate charged, the invoices were limited in detail and reflected legal work primarily related to reviewing and responding to the Debtor's claim objection. The bankruptcy court determined that the amount of time expended for such services was not reasonable and that allowable fees should be reduced to $750. Although EMI challenges this ruling by asserting that the fees charged were at a "preferential rate" of $150 per hour, that addressing the claim required an evaluation of certain legal issues, and that the bankruptcy court's reduction of allowable fees was "too harsh," EMI failed to offer any legal authority to support its position that the asserted fees were reasonable. Thus, the Panel finds no abuse of discretion in the bankruptcy court's reduction of allowable post-petition attorney's fees.

II. The Bankruptcy Court Did Not Abuse Its Discretion in Denying EMI's Motion for Reconsideration

The Panel also finds no abuse of discretion by the bankruptcy court in denying reconsideration of the Claim Order.

Motions for reconsideration of orders allowing or disallowing claims typically are governed by § 502(j) and Bankruptcy Rule 3008. See 11 U.S.C. § 502(j) (allowing a claim determination to be reconsidered "for cause" and "allowed or disallowed according to the equities of the case"); Fed. R. Bankr. P. 3008 (implementing § 502(j)). However, when

determining whether there is cause to reconsider a claim determination under § 502(j), courts often employ the same analysis as for a motion under Rule 59(e). See, e.g., In re Bartley, No. 3:17-cv-450 (MPS), 2018 WL 379009, at *2 (D. Conn. Jan. 11, 2018). In the First Circuit, to prevail under Rule 59(e), "the moving party must 'either clearly establish a manifest error of law or must present newly discovered evidence.'" Marie v. Allied Home Mortg. Corp., 402 F.3d 1, 7 n.2 (1st Cir. 2005) (citations omitted). "The rule does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could and should have been presented to the . . . court prior to the judgment." Banco Bilbao Vizcaya Argentaria P.R. v. Santiago Vázquez (In re Santiago Vázquez), 471 B.R. 752, 760 (B.A.P. 1st Cir. 2012) (quoting Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997)).

EMI failed to establish a manifest error of law or fact warranting reconsideration under Rule 59(e). The bankruptcy court's findings of fact and legal conclusions were amply supported by the record and case law. EMI's arguments on reconsideration were either a regurgitation of arguments previously made or arguments that should have been made earlier but were not.

Nor did the Freddie Mac guidelines constitute "newly discovered evidence" warranting reconsideration. It is well established that a Rule 59(e) motion "does not afford the movant an opportunity to introduce evidence that was previously available." Ostrander v. Dowd (In re Polish-Am. Citizen's Club Inc. of Willimansett), BAP No. MS 22-033, 2023 WL 4259266, at *12 (B.A.P. 1st Cir. June 27, 2023) (quoting Mancini v. City of Providence, 909 F.3d 32, 48 (1st Cir. 2018)). "Therefore, a party asking a court to reconsider its judgment on this basis must show that it could not in the exercise of reasonable diligence have obtained the new evidence earlier." Id. (quoting City of Mia. Fire Fighters' & Police Officers' Ret. Tr. v.

CVS Health Corp., 46 F.4th 22, 36 (1st Cir. 2022)) (citation modified). "This means that 'when a party is made aware that a particular issue will be relevant to its case but fails to produce readily available evidence pertaining to that issue, the party may not introduce that evidence to support a Rule 59(e) motion.'" Id. (quoting In re Ortiz Arroyo, 544 B.R. 751, 757 (Bankr. D.P.R. 2015)).

The record reflects EMI knew the Debtor was challenging the reasonableness of the asserted lump sum fee for the foreclosure action yet failed to introduce the Freddie Mac guidelines to support its position that the claimed attorney's fees were reasonable and customary until after the bankruptcy court entered the Claim Order. EMI has not offered any reason why it could not, in the exercise of due diligence, have supplied the Freddie Mac guidelines to the bankruptcy court before the court made its determination. The bankruptcy court's refusal to consider them on reconsideration did not constitute an abuse of discretion.

EMI's suggestion that the bankruptcy court should have conducted an evidentiary hearing on the motion for reconsideration also lacks merit. The First Circuit has held that even when the rules require notice and a hearing, "a hearing—much less an evidentiary hearing—is not required in every instance." Prebor v. Collins (In re I Don't Trust), 143 F.3d 1, 3 (1st Cir. 1998) (citing 11 U.S.C. § 102(1)(A)-(B)). "Where the parties do not request an evidentiary hearing or where the core facts are not disputed, the bankruptcy court is authorized to determine contested matters . . . on the pleadings and arguments of the parties, drawing necessary inferences from the record." Conde-Vidal v. Pinto-Lugo (n re Álvarez Vélez), 617 B.R. 158, 168 (B.A.P. 1st Cir. 2020) (emphasis and citations omitted).

There is no indication in the record that EMI requested an evidentiary hearing or that one was required to resolve EMI's motion. Thus, the bankruptcy court did not abuse its discretion by not conducting an evidentiary hearing on EMI's motion for reconsideration.

CONCLUSION

As EMI has not demonstrated any error or abuse of discretion by the bankruptcy court in partially disallowing EMI's claim and denying reconsideration of the Claim Order, the Panel **AFFIRMS** both orders.